

Chicago District Council of Carpenters, Chicago and Vicinity, Locals 558, 1527 and 2004 and B & W Carpenter Contractors, Ltd. and James Murphy and Doug Winton and Rich Walker. Cases 13-CC-1364, 13-CB-10267, 13-CB-10268, and 13-CB-10269

17 August 1984

DECISION AND ORDER

BY MEMBERS ZIMMERMAN, HUNTER, AND
DENNIS

On 9 November 1983 Administrative Law Judge William A. Gershuny issued the attached decision. The General Counsel filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

¹ The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

DECISION

STATEMENT OF THE CASE

WILLIAM A. GERSHUNY, Administrative Law Judge. A hearing was held on September 14-15, 1983, in Chicago, Illinois, on consolidated complaint issued June 24, 1983, as amended at the hearing, alleging a violation of Section 8(b)(4)(i) and (ii)B, based on oral directives of a Carpenters Union official to employees of a subcontractor on December 20, 29, and 31, 1982, not to work because the Laborers Union had a dispute with the general contractor, and a violation of Section 8(b)(1)(A) based on the imposition of fines on three employees who disobeyed those directives.

At issue principally is whether Respondent Unions engaged in illegal secondary activity.

On the entire record, including my observation of witness demeanor, I make the following

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. JURISDICTION AND LABOR ORGANIZATION

The complaint alleges, the answer admits, and I find that developer-general contractor Pulte (secondary employer) and its subcontractor B & W Carpenter Contractors are employers subject to the Act and that Respondents are labor organizations within the meaning of Section 2(5) of the Act.

II. UNFAIR LABOR PRACTICES

The background facts are largely undisputed.

In 1982, Pulte, as developer-general contractor, was constructing homes in a residential subdivision, employing nonunion laborers at this and other construction sites in the area.

It subcontracted to B & W all carpentry work and the responsibility to clean up not only its own scrap but also that of other subcontractors on the site. B & W employed approximately 15 journeyman carpenters. Under its labor agreement with the Carpenters Union, all work, including cleanup, was to be performed by journeymen; the classifications of laborer, apprentice, or helper were not recognized; and new hires were required to join the Union after 7 days.

On Wednesday, December 15, 1982, the Laborers Union began picketing the site with signs indicating that both Pulte and B & W failed to pay wages which met area standards. By Friday, December 17, all references to B & W were deleted from the picket signs. On Sunday, December 19, Pulte established reserved gates, which at no time thereafter were violated by any employee or contractor. The picketing continued until Friday, December 31, at 10 a.m. The carpenters alone failed to honor that picket line during the first week. Company records reveal the following as to which carpenters worked on the site thereafter:

Mon., Dec. 20	None
Tues., Dec. 21	None
Wed., Dec. 22	None
Thurs., Dec. 23	None
Fri., Dec. 24	None
Mon., Dec. 27	None
Tues. Dec. 28	None
Wed., Dec. 29	None
Thurs., Dec. 30	None*
Fri., Dec. 31	None*

* Except Murphy, Winton, & Walker

During the period of the Laborers' picketing, December 15-31, and in some cases for months before, the Carpenters had a primary labor dispute with B & W concerning (1) the use of nonunion employees to perform carpentry as well as cleanup work; (2) the underreporting to the several Trust Funds of hours which B & W's president "worked with the tools"; (3) the misreporting to the Funds of nonunion employees allegedly performing nonbargaining unit work; (4) the nonpayment to the several Funds of contractual contributions; and (5) the

failure to provide a surety bond to guarantee payment of such contributions. Details of each dispute follow.

(1) On December 14 and 15, B & W admittedly used a nonunion driver-handyman to perform bargaining unit cleanup work. On December 14, it employed (and then terminated when the Carpenters protested) another nonunion employee for cleanup. Despite demand, B & W declined to furnish the Carpenters with proof that such nonunion employees were terminated. During that period, Pulte, without knowledge of the Carpenters, also provided nonunion employees to perform some of B & W's cleanup work. These unidentified employees were seen using B & W equipment. On December 29, two unidentified employees were performing carpentry work on the roof of a new home; B & W's president (also a union member) refused to identify them; another union member identified them only as new hires with no cards; and a later check of license plates identified them as old employees and union members. A routine check of employee information cards revealed that one carpenter (Hardin) was a former union member whose membership had been terminated by nonpayment of dues; information received by the Carpenters from an employee revealed the presence of another nonunion carpenter (Brodie) on the job. During this period, the Carpenters business representative concluded (with considerable cause, I find) that B & W was "hiding" nonunion employees on the payroll.

(2) As the result of an early 1982 audit, the several Funds claimed that B & W underreported the hours worked by its president and that B & W owed additional contributions. B & W reported his actual hours, whereas the contract and Fund agreements required the reporting of a full 40 hours for any week in which an official worked any hours with the tools.

(3) The audit also revealed the misreporting of employees said to have performed nonbargaining unit work. The Carpenters claims jurisdiction over all work performed by the signatory on the job, whether it consists of carpentry or cleanup work.

(4) As far back as March 1981, B & W has been almost continuously delinquent in its payment of contributions to the Funds. On March 23, September 27, and again on December 30, the Carpenters issued shutdown letters to B & W based on its "repeated failure to make proper contributions."

(5) B & W, during all of 1982, has not given a surety bond guaranteeing payment of these contributions. The bond took on added significance in the spring of 1982 when B & W sought reorganization under the bankruptcy laws. There is some evidence that at least 2 months of contributions have been "lost" due to the pendency of that proceeding.

The critical issue in this case—the precise instructions given to the carpenters by business representative Macenas—admittedly turns on a resolution of witness credibility. The testimony of General Counsel's three witnesses (Pulte Vice President Martin, B & W President Butterfuss, and carpenter Murphy) was that Macenas directed the employees on December 20, 29, and 31 not to work because of the Laborers' ongoing dispute with Pulte. Respondents' witnesses (business representatives

Macenas and Umlauf) testified that Macenas spoke only of B & W's use of nonunion labor to perform bargaining unit work and its delinquency in making Fund contributions. More specifically, Macenas testified that on or about December 23¹ he told the carpenters about the existence of nonunion men performing work for B & W, mentioning the Laborers' dispute with Pulte only once to emphasize the fact that the two disputes were separate and unrelated; that on or about December 29 he again told the carpenters of the presence of nonunion employees on the B & W jobsite, asking them to "abide by our rules," but again making no reference to the Laborers' pickets; that on December 31, he distributed to all carpenters copies of a "shut-down" letter (based on nonpayment of contributions to the Funds), adding that it had nothing to do with B & W's use of nonunion employees; and that at no time did he direct or request the carpenters to honor the Laborers' picketing activity against Pulte. Umlauf corroborated this testimony.

I credit the testimony of Macenas and Umlauf, based primarily on my observation of their demeanor on the witness stand. Both appeared to be candid and were particularly convincing. Moreover, their testimony did not appear to have that rehearsed quality. In addition, Macenas' testimony was entirely consistent with the realities of the situation—that, because of a long history of jurisdictional disputes with the Laborers, the Carpenters would be the last to support a picket line established by the Laborers over a dispute which in part (according to the General Counsel) related to its claim over that very cleanup work; and that the Carpenters itself had a number of serious, ongoing disputes of a primary nature with B & W. Finally, their version of the discussions is consistent with the extensive documentary evidence (including the charge specifications and the transcript of testimony at the disciplinary hearing) relating to the subsequent intraunion charges filed against the three carpenters and others—there is reference to the members' failure and refusal to cooperate with the business representative's efforts to determine the existence of contractual violations by B & W, but not one reference to instructions given by the Carpenters to B & W carpenters not to cross the Laborers' picket line.

On the other hand, I was left with the feeling that the General Counsel's witnesses were relating a well-rehearsed and sanitized version of the facts, one which unaccountably ignored the existence of a number of serious contract violations on the part of B & W.

In view of the foregoing, I find and conclude that Respondent engaged in no illegal secondary activity in violation of Section 8(b)(4)(i) and (ii)(B). As to the remaining allegations of a violation of Section 8(b)(1)(A), based on the imposition of fines on the three carpenters, counsel for the General Counsel candidly conceded at the hearing that they rest exclusively on a finding of illegal secondary activity and that, without such a finding, they too must be dismissed.

¹ There is some insignificant discrepancy in dates due to Macenas' testimony from memory.

Accordingly, the complaint must be dismissed in its entirety.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommendation²

² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the

ORDER

It is ordered that the complaint be, and the same hereby is, dismissed.

Board and all objections to them shall be deemed waived for all purposes.